



## Connecticut Committee on Judicial Ethics

### Informal Opinion Summaries

**2023-04 (July 20, 2023)**

**Extrajudicial Activities; Service on Board of Non-Law-Related Nonprofit Organization; Canons 1 & 3; Rules 1.2, 1.3, 3.1 & 3.7**

**Issue:** May a Judicial Official continue to serve on the Board of Directors of a not-for-profit Catholic health care entity?

**Facts:** The organization describes itself, in its online materials, as a Catholic health care delivery system comprised of 5 member hospitals, walk-in clinics, medical offices, specialized facilities, affiliated institutions, and foundations serving a population of nearly 3 million people. The organization's mission is to become the national leader in improving the health of its communities and each person they serve. The organization's website states:

Guided by our charitable mission and core values -- reverence for each person, justice, commitment to those who are poor, stewardship, and integrity – our work extends far beyond hospital or clinic walls. We continually invest resources into our communities to meet health needs of underserved and vulnerable community members, bringing them healing, comfort, and hope. Through our community benefit initiatives, we help to make our communities healthier places to live.

The nonprofit's parent organization, which bears a similar name, engages in advocacy, comments on federal policies, and invites members to take part in their current campaigns (i.e., Congress Must Act to Advance Gun Safety, Hospitals Need Fair Payment to Sustain Mission, and Congress Must Invest in the Health Care Workforce). Some of the many policy issues in which the parent organization has been involved include protecting 340B drug pricing, advancing policies that strengthen workplace safety for nurses, creating national supply chain certainty, extending health care access to individuals in the DACA program, and ensuring access to Medicaid services.

The nonprofit organization's litigation caseload in Connecticut courts is substantial. Judicial's online Case Look-up shows that there are over 1,300 Superior Court records involving the nonprofit organization.

#### **Relevant Code Provisions:**

Canon 1. A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Canon 3. A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.

Rule 1.2 of the Code of Judicial Conduct (Promoting Confidence in the Judiciary) states that a judge "should act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge."

Rule 1.3 (Avoiding Abuse of the Prestige of Judicial Office) states that "[a] judge shall not use the prestige of judicial office to advance the personal or economic interests of the judge or others or allow others to do so."

Rule 3.1 (Extrajudicial Activities in General) provides that subject to certain conditions a judge "may engage in extrajudicial activities except as prohibited by law." When engaging in extrajudicial activities, a judge shall not participate in activities that (1) will interfere with the proper performance of judicial duties, (2) will lead to frequent disqualification, (3) would appear to a reasonable person to undermine the judge's independence, integrity or impartiality, or (4) engage in conduct that would appear to a reasonable person to be coercive.

Rule 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities) states that:

(a) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored . . . by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit including, but not limited to the following activities:

. . .

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(A) will be engaged in proceedings that would ordinarily come before the judge; or

(B) will frequently be engaged in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

**Discussion:** A judge's participation in extra-judicial activities is governed by Rules 3.1 and 3.7. These rules allow judges to participate in educational, religious, charitable, fraternal, or civic non-for-profit activities that do not "interfere with the proper performance of the judge's judicial duties" or "undermine the judge's independence, integrity, or impartiality" and permit judges to serve as "an officer, director, trustee, or nonlegal advisor of such an organization or entity," subject to certain limitations. Those limitations are set forth in Rule 3.7(a)(6)(A) & (B) and state that a judge may not serve if the organization will be engaged in proceedings that would ordinarily come before the judge or will frequently be engaged in adversary proceedings in the

court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

Whether a judge may serve on the board of the nonprofit health care organization depends on several factors, including the nature of the organization, whether the organization is frequently involved in litigation and adversary proceedings that are likely to come before the judge, as well as before any court in which the judge is a member or any court subject to the appellate jurisdiction of the court of which the judge is a member, whether the organization makes policy decision that may have political significance or that imply commitment to causes that may come before the courts, and whether a judge's involvement with the organization would reflect adversely upon their impartiality. See [Formal Advisory Opinion JE 2009-10](#).

This Committee has determined, in its prior opinions, that judges may serve on the board of a country club ([JE 2014-18](#)), on the board of a condominium association ([JE 2014-17](#)), and on the board of a nonprofit law-related organization that engages in fund-raising activities ([JE 2012-07](#)). In contrast, the Committee has concluded that judges may not serve as a member of a community advisory board for a hospital consortium that is frequently engaged in adversary proceedings in the Connecticut Superior Court ([JE 2012-33](#)), on the board of directors of the Greater Hartford Legal Aid ([Formal Advisory Opinion JE 2009-10](#)), on the board of a law-related professional organization that has received payments from Judicial and will frequently be engaged in adversary proceedings in the court of which the judge is a member ([JE 2013-31](#)), on the board of a nonprofit organization that has multiple contracts with Judicial ([JE 2013-15](#)), and as an officer, director, or section leader for the CBA because the CBA takes public positions on legislation and engages in issue advocacy, including issues that directly impact the judiciary ([JE 2013-16](#)).

**Recommendation:** Service on the board of this not-for-profit health care organization is problematic for two reasons. First, the organization has over 1,300 Superior Court cases listed on the Judicial Branch's Case Look-up. It is clear, based on these numbers, that the health care organization is frequently involved in adversary proceedings "in a court of which the judge is a member." Second, the nonprofit's parent organization advocates for public policies that promote care for the common good, comments on emerging federal regulations that may impact the community and invites members to take part in their current campaigns. Examples of the types of policies and legislative campaigns that the parent organization supports include: gun safety, investing in the health care workforce, drug pricing policies, workplace safety for nurses, creating national supply chain certainty, health care access for DACA individuals and ensuring access to Medicaid Services. Judicial service on the board of an organization whose parent entity engages in this type of issue advocacy may undermine the public's confidence in the integrity and impartiality of the judiciary and may create a perception that the judicial official is lending the prestige of judicial office to advance the private interests of others.

Based on the available information, including that the health care organization is frequently engaged in adversary proceedings in the Superior Court and that the parent organization engages in issue advocacy, it is this Committee's opinion that service on the board of directors of this health care organization would violate Rules 1.2, 1.3, 3.1, and 3.7.